

Message Text

LIMITED OFFICIAL USE

PAGE 01 BRUSSE 16235 141951Z
ACTION EUR-12

INFO OCT-01 ISO-00 L-03 AID-05 CEA-01 CIAE-00 COME-00
EB-08 EA-10 FRB-03 INR-07 IO-13 NEA-10 NSAE-00
USIA-06 OPIC-03 SP-02 TRSE-00 LAB-04 SIL-01
AGRE-00 OMB-01 SS-15 STR-05 /110 W
-----122008 150543Z/11

R 141830Z NOV 77
FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC 3090
INFO ALL EC CAPITALS

LIMITED OFFICIAL USE BRUSSELS 16235

USEEC

PARIS ALSO FOR OECD

E.O. 11652: N/A
TAGS: EGEN, EEC
SUBJECT: COURT OF JUSTICE APPEAL OF UNITED BRANDS ANTI-TRUST CASE

1. THE EUROPEAN COURT OF JUSTICE IS EXPECTED TO DELIVER ITS OPINION SOON ON THE EC COMMISSION'S 1975 DECISION TO FINE UNITED BRANDS ONE MILLION UNITS OF ACCOUNT (UA) AND TO OBLIGE IT TO REDUCE ITS PRICES, ON THE GROUNDS OF ABUSE OF A DOMINANT POSITION IN THE BANANA SECTOR IN THE BENELUX, GERMANY, DENMARK AND IRELAND. THE COMMISSION MAINTAINS THAT UB HAS PROHIBITED RESALE OF BANANAS IN THEIR UNRIPIENED STATE (EFFECTIVELY ELIMINATING RE-EXPORT), REFUSED TO SERVE PARTICULAR MARKETS, AND ENGAGED IN DISCRIMINATORY AND EXCESSIVE PRICING.

2. UB IS APPEALING THE DECISION ON GROUNDS THAT ITS MARKET SHARE FOR BANANAS AS CALCULATED BY THE COMMISSION

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BRUSSE 16235 141951Z

(BUT CONTESTED BY UB ITSELF) AMOUNTS TO 45 PERCENT, A MUCH LOWER PERCENTAGE THAN THE 85 PERCENT WHICH HAS BECOME THE INFORMAL NORM FOR ARTICLE 86 (ABUSE OF DOMINANT POSITION) PROCEEDINGS. UNITED BRANDS FEELS THAT WITH SUCH A COMPARATIVELY MODEST SHARE OF THE BANANA MARKET, IT CANNOT BE ACCUSED OF HOLDING A DOMINANT POSITION GIVEN THAT THE PRODUCT IN QUESTION IS

AN AGRICULTURAL COMMODITY WHOSE PRICES VARY IN TERMS OF THE QUANTITY MARKETED. ACCORDING TO UB, THE EXTREMELY LOW BANANA PRICES, THEIR FLUCTUATIONS AND PERSISTENT DECLINE OVER THE PAST 20 YEARS, AS WELL AS THE HEAVY LOSSES SUFFERED BY UB ARE PROOF THAT THE BANANA MARKET IS IN FACT A HIGHLY COMPETITIVE ONE. IN ADDITION, BANANAS COMPETE WITH OTHER FRESH FRUITS - A FACTOR BORNE OUT BY THE MARKED SEASONAL FLUCTUATION IN THE DEMAND-FOR BANANAS. CONSEQUENTLY, IN UNITED BRAND'S OPINION, THE CASE SHOULD COVER THE FRESH FRUIT MARKET IN GENERAL AND NOT FOCUS ON BANANAS ONLY.

4. UNITED BRANDS FURTHER DENIES HAVING FIXED DISCRIMINA-

TORY OR EXCESSIVE PRICES. IT MAINTAINS THAT THE COMPLETE AND ERRONEOUS INFORMATION, AND WHILE UNITED BRANDS APPLIES DISSIMILAR PRICES IN DIFFERENT MARKETS, THIS IS DUE TO THE FACT THAT MARKET CONDITIONS DIFFER FROM ONE MARKET TO ANOTHER.

5. THE UNITED BRANDS APPEAL MAINTAINS THAT THE COMMISSION, AT THE TIME WHEN IT JUDGED UB "CURRENT" PRICES ABUSIVE, DID NOT IN FACT KNOW WHAT THESE PRICES WERE FOR THE WHOLE OF 1975. NOR DID IT SEEK TO ESTABLISH THE EXACT LEVEL OF UB PROFITS. FINALLY UNITED BRANDS CLAIMS THAT PRICE EVIDENCE SUPPLIED BY UB COUNSEL WAS TOTALLY DISREGARDED BY THE COMMISSION.

6. NONETHELESS, DURING THE CLOSING ARGUMENTS IN THE APPEAL:
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BRUSSE 16235 141951Z

PROCESS, HENRY MAYROS, ADVOCATE GENERAL OF THE EUROPEAN COURT OF JUSTICE, GAVE STRONG ENDORSEMENT OF THE COMMISSION'S FINDINGS AGAINST UB'S TRADING PRACTICES. MAYROS, CALLING ON THE COURT OF JUSTICE TO REJECT THE UB APPEAL REPORTEDLY SAID THAT THE ONE MILLION U.A. FINE SEEMED COMPLETELY ACCEPTABLE, IF NOT TRIVIAL, WHEN COMPARED TO THE QUOTE COMMISSION UNQUOTE PAID IN 1975 BY UB TO A HONDURAS GENERAL IN AN EFFORT TO OBTAIN CERTAIN COMMERCIAL ADVANTAGES. MOREOVER, MAYROS CLAIMED, THE AMOUNT PALES BEFORE THE AMOUNT DEVOTED BY UB TO ADVERTISING THEIR PRODUCTS. MORRIS

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COURTS, CUSTOMS FINES, BANANAS
Control Number: n/a
Copy: SINGLE
Sent Date: 14-Nov-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977BRUSSE16235
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770421-0776
Format: TEL
From: BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19771164/aaaacceg.tel
Line Count: 105
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: e2f4f31a-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 18-Jan-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 606131
Secure: OPEN
Status: NATIVE
Subject: COURT OF JUSTICE APPEAL OF UNITED BRANDS ANTI- TRUST CASE
TAGS: EGEN, EEC, UNITED BRANDS
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/e2f4f31a-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009